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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MICHAEL KONDASH, APRIL KONDASH,)
GARLAND ARGO, CINDY ARGO, KEVIN)
BREN, WILLIAM COX, MICHAEL)
COURTNEY, GRANT DODGE, ANGIE)
DODGE, DANNIS DANKENBRING, JUDY)
DANKENBRING, JOHN FORSGREN,)
MICHAEL HERRING, MATT MEYERS,) Case No. CV04-1503-HU
BRIAN LARSON, GARY PALUMBO, DR.)
DARYL LEU, JOSE PEREZ, DAN) DEFENDANTS' ANSWER TO PLAINTIFFS'
ROBINSON, THOMAS SIEFKE, STEVE) AMENDED COMPLAINT
TIPTON, ROBERT WALKER, and ROBERT)
WRIGHT,) DEMAND FOR JURY TRIAL
Plaintiffs,)
v.)
CITY OF GRESHAM, OFFICER HOGAN,)
personally, and OFFICER BLAKE,)
personally,)

Defendants.

For their Answer to plaintiffs' Amended Complaint, defendants City of Gresham, Officer Hogan, and Officer Blake hereby admit, deny and allege as follows:

1.

Admit paragraphs 1-3.

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2.

Admit that on or about June 7, 2003, plaintiffs, members or associates of the other Gypsy Joker Motorcycle Gang, were riding in a large group of motorcycles to multiple strip clubs; that defendants attempted to stop the group for traffic violations, but plaintiffs refused to stop and attempted to elude the officers; that near SE 185th and Stark Street in Gresham, Oregon, defendants and officers from other law enforcement agencies eventually stopped, detained and issued citations to some or all of the plaintiffs for felony attempt to elude and failure to obey traffic control devices; and that defendants and officers from other agencies had their weapons drawn and secured the hands of some or all of the plaintiffs.

Except as expressly admitted above, defendants deny each and every remaining allegation of plaintiffs' Complaint, and the whole thereof.

BY WAY OF FURTHER ANSWER AND FOR A FIRST AFFIRMATIVE DEFENSE, defendants allege:

3.

Officers Hogan and Blake are entitled to qualified immunity.

BY WAY OF FURTHER ANSWER AND FOR A SECOND AFFIRMATIVE DEFENSE, defendants allege:

4.

Defendants' conduct was justified and they used no more force than was reasonably necessary under the circumstances to stop and detain plaintiffs and ensure the safety of the officers and other persons present.

BY WAY OF FURTHER ANSWER AND FOR A THIRD AFFIRMATIVE DEFENSE, defendants allege:

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5.

At all times, defendants had reasonable suspicion to stop and detain plaintiffs and probable cause to arrest some or all of the plaintiffs.

BY WAY OF FURTHER ANSWER AND FOR A FOURTH AFFIRMATIVE DEFENSE, defendants allege:

6.

Officers Hogan and Blake are not proper defendants on plaintiffs' state law claims (first, second, and fourth causes of action) pursuant to ORS 30.265(1).

BY WAY OF FURTHER ANSWER AND FOR A FIFTH AFFIRMATIVE DEFENSE, defendants allege:

7.

Plaintiffs' state law claims (first, second, and fourth causes of action) are subject to the conditions, limitations, and immunities contained in the Oregon Tort Claims Act, ORS 30.265 *et. seq.*

BY WAY OF FURTHER ANSWER AND FOR A SIXTH AFFIRMATIVE DEFENSE, defendants allege:

8.

Plaintiffs' injuries and/or damages were caused by their own comparative fault in one or more of the following particulars:

- a. In failing to obey traffic signals;
- b. In blocking cross streets and cross traffic that had green lights so that the motorcycle group could pass through intersections without stopping for red lights;
- c. In failing to stop for a marked patrol vehicle with its lights flashing and siren sounding;

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- d. In operating their motorcycles in such a way that prevented them from hearing the siren from the marked patrol vehicle behind them;
- e. In operating their motorcycles in such a way that prevented them from seeing the marked patrol vehicle with its lights flashing behind them;
- f. In belonging to or associating with an organization known to law enforcement to have criminal ties; and
- g. In attempting to elude Officers Blake and Hogan.

BY WAY OF FURTHER ANSWER AND FOR A SEVENTH AFFIRMATIVE DEFENSE, defendants allege:

9.

Plaintiffs fail to state claims for relief on some or all of their causes of action.

WHEREFORE, having fully answered plaintiffs' Complaint, defendants pray for judgment in their favor to include an award of their costs, disbursements and attorney fees incurred herein pursuant to 42 U.S.C. § 1988.

Defendants respectfully request trial by jury.

DATED this 28th day of January, 2005.

MILLER & WAGNER LLP

By: /s/ David C. Lewis
David C. Lewis, OSB 95334
Of Attorneys for Defendants
(503) 299-6116

Trial Attorney:
Robert S. Wagner, OSB #84411

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2005, I served the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT** on the following parties at the following addresses:

Leonard R. Berman
Attorney at Law
4711 S.W. Huber Street, E-3
Portland, OR 97219
Attorney for Plaintiffs

by CM/ECF and by mailing to them a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the addresses set forth above, and deposited in the U.S. Post Office at Portland, Oregon, on said day with postage prepaid.

/s/ David C. Lewis
David C. Lewis, OSB #95334